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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,447	11/13/2000	Toan Trinh	5388RDD	8236
27752 7590 06/11/2009 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER YU, GINA C				
ART UNIT 1611		PAPER NUMBER		
MAIL DATE 06/11/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/711,447

Applicant(s)

TRINH ET AL.

Examiner

GINA C. YU

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 9-20, 23-25, 30-33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 9-20, 23-25, 30-33, and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of claim amendment filed on February 27, 2009.

Claims 1, 9-20, 23-25, 30-33 and 35 are pending. The terminal disclaimer filed on September 24, 2008 has been disapproved for reasons stated below. The obviousness double patenting rejections made in the previous Office action dated January 27, 2007 are maintained for reasons of record.

Terminal Disclaimer

The person who signed the terminal disclaimer has failed to state his/her capacity to sign for the corporation or other business entity or organization, and he/she has not been established as being authorized to act on behalf of the assignee. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

It would be acceptable for a person, other than a recognized officer, to sign a terminal disclaimer, provided the record for the application includes a statement that the person is empowered to sign terminal disclaimers and/or act on behalf of the organization.

Accordingly, a new terminal disclaimer which includes the above empowerment statement will be considered to be signed by an appropriate official of the assignee. A separately filed paper referencing the previously filed terminal disclaimer and containing a proper empowerment statement would also be acceptable.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 9-20, 23-25, and 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-31 and 34-40 of U.S. Patent No. 6451065 B2.

Claim 1 of the '065 patent is directed to a method of reducing malodor of an inanimate object or inanimate surface with a composition which comprises 0.01-1 % by weight of perfume; 0, 1-10 % of metallic salt; an aqueous carrier; and solubilizing aid. Claim 23 further requires low molecular weight monohydric alcohol at a level of less than about 5 %. See '065, claims 24-26. In the patent, claim 31 requires cyclodextrin, which is defined in specification, Examples. See instant claims 1, 9-17, 30-32. The Clog P value of the perfume is defined the specification, col. 6, lines 43-46. The perfume:cyclodextrin ratio of the instant application is obviously met when these

components are used in the weight amount as disclosed in the '065 patent. Claims 2-13 of the patent disclose the specific metal salts of instant claims 18-20. The solubilizing agents of instant claims 23-25, fatty acids of esters of ethoxylated sorbitan and mixtures thereof, are disclosed in claims 14-21 of the patent. The specification also defines the water-soluble preservative of '519 claims 29 and 30 in Examples VII and VIII, which contain 5-chloro-2-methyl-4-isothiazolin-3-one (Kathon CG), which is the antimicrobial preservative of instant claim 31 (E). For instant claims 33 and 35, although '519 does not claim a method of making the composition, the compositions of the patented claims are defined in Examples, which disclose the process of making clear compositions with specific pH. See also instant claim 30.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition of both sets of the claims have overlapping limitations.

Claims 1, 9-20, 23-25, 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6248135 B1.

Claim 2 of the '135 patent is directed to a method of using an aqueous composition comprising 0.015-0.3 % by weight of perfume wherein at least 25 % of the perfume ingredients have a Clog P of 3 or smaller and water; and at least 1 % of monohydric alcohol; and optionally 0.1-5 % by weight of solubilized unprotected cyclodextrin. The presently claimed perfume:cyclodextrin ratio is obviously met when these components are used in the weight amount as disclosed in the '135 patent. Claim

3 and specification, col. 8, lines 12 – 17, further define the specific types of cyclodextrin of instant claims 1, 16, and 17. Claim 3 of the patent also requires 0.3-5 % of ZnCl_2 , of instant claims 18-20 and water-soluble preservatives. The specification defines the water-soluble preservative in Examples VII and VIII, which contain 5-chloro-2-methyl-4-isothiazolin-3-one (Kathon CG). See instant claim 31 (E). For instant claims 33 and 35, although '135 does not claim a method of making the composition, the compositions of the patented claims are defined in Examples, which disclose the process of making clear compositions with specific pH. See also instant claim 30. Fatty acid esters of ethoxylated sorbitans are defined as a preferred solubilizing aid. See '135, claims 7 and 11; col. 10, lines 5-6; instant claims 23-25.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition of both sets of the claims have overlapping limitations.

Claims 1, 9-20, 23-25, 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6146621.

The composition in '621 claim 1 comprises 0.01-1 % by weight of perfume and aqueous carrier; 1-5 % of monohydric alcohol; and 0.1-5 % by weight of solubilized unprotected cyclodextrin. Claim 4 further requires that at least 25 % of the perfume ingredients have a Clog P value of 3 or smaller. The presently claimed perfume:cyclodextrin ratio is obviously met when these components are used in the weight amount as disclosed in the '621 patent. The patent also defines cyclodextrin as

the solubilized cyclodextrins of instant claims 9 –15 and 30-32 in col. 9, lines 23-54. The patented compositions are defined by the Example formulations, which are clear, and contain the water-soluble metallic salts of instant claims 18-20, polysorbate 60 of instant claims 23-25, and Kathon CG (5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one), as required by instant claims 30-32. See '621, Examples XI and XII; instant claim 35. For instant claims 33 and 35, although '621 does not claim a method of making the composition, the compositions of the patented claims are defined in Examples, which disclose the process of making clear compositions with specific pH. See also instant claim 30.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition of both sets of the claims have overlapping limitations.

Claims 1, 9-20, 23-25, 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 8-18 of U.S. Patent No 6,077,318.

Claim 1 of the '318 patent is directed to a method of reducing malodor impression, by using an aqueous composition comprising 0.01-1 % of perfume; low molecular weight monohydric alcohols; 0.1-5 % of unprotected cyclodextrin of cyclodextrin derivative in solubilized form less than about 3 % of solubilizing agent. Claim 4 requires that the perfume ingredients have a Clog P of about 3 or smaller. See instant claim 1(A). The perfume: cyclodextrin weight ratio of the present claims 1, 16 and 17 are also disclosed in '318, claims 8, 12 and 13. The cyclodextrins of instant

claims 9-15 are also disclosed in '318 claims 9-11. The patent claims using the metal salts of instant claims 18-20. See '318, claims 14-16. The solubilizing agents of instant claims 23-25, fatty acids of esters of ethoxylated sorbitan and mixtures thereof, are defined in col. 11, lines 43-44. The preservative of the patented claim 19 is defined in col. 13, 65-col. 14, line1, meeting instant claim 31 (E). For claims 33 and 35, although the '621 patent does not claim a method of making the composition, the compositions of the patented claims are defined in Examples, which illustrate the process of making the clear compositions with specific pH. See also instant claim 30.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to compositions having overlapping claims.

Claims 1, 9-20, 23-25, 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 15-24 of U.S. Patent No 5,668,097.

Claim 1 of the '097 patent is directed to an aqueous spray composition comprising 0.1-5 % of unprotected cyclodextrin or cyclodextrin derivative in solubilized form, 0.0001-0.01 % of a solubilized, water-soluble, antimicrobial preservative, less than about 3 % of a low molecular weight monohydric alcohol. Claims 23 and 24 require that 0.003-0.3 % of a perfume ingredient, and the specification defines that the perfume has a Clog P value of about 3 or smaller. See col. 17, lines 42 – 55. The perfume: cyclodextrin weight ratio of the present claims 1, 16 and 17 are met by using the perfume and cyclodextrin as claimed by the '097. The cyclodextrins of instant claims 9-

15 are disclosed in '097 claims 2-8. The patent also claims the metal salts of instant claims 18-20. See '097, claims 20-22. The solubilizing agents of instant claims 23-25, fatty acids of esters of ethoxylated sorbitan and mixtures thereof, are defined in col. 22, lines 20-21. The preservative of instant claim 31 (E) is disclosed in patented claims 15 and 16.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to compositions having overlapping limitations. For claims 33 and 35, although the '097 patent does not claim a method of making the composition, the compositions of the patented claims are defined in Examples, which illustrate process of making clear compositions.

Claims 1, 9-20, 23-25, 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No 5,670,475.

Claim 1 of the '475 patent is directed to a method of treating an inanimate article or surface, to remove malodor impression, by using an aqueous composition comprising 0.01-1 % of perfume, 0.1-5 % of unprotected cyclodextrin or cyclodextrin derivative in solubilized form, 0.0001-0.01 % of a solubilized, water-soluble, and 0.1-10% of water-soluble salts selected from zinc, copper, and mixtures, and less than about 5 % of a low molecular weight monohydric alcohol. Claim 4 requires that the perfume have a Clog P value of about 3 or smaller. The perfume: cyclodextrin weight ratio of the present claims 1, 16 and 17 is taught in claims 8, 12, and 13 of the '475 patent. The cyclodextrins of instant claims 9-15 are disclosed in '475 claims 9-11. The patent

claims using the metal salts of instant claims 18-20. See '475, claims 14 and 15. The solubilizing agents of instant claims 23-25, fatty acids of esters of ethoxylated sorbitan and mixtures thereof, are defined in col. 10, line 14. The specification defines the composition of the patent in Examples, which contain the antimicrobial preservative of claim 31 (E). For claims 33 and 35, although the '097 patent does not claim a method of making the composition the compositions of the patented claims are defined in Examples, which illustrate the process of making the clear compositions with specific pH. See also instant claim 30.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to compositions having overlapping claims.

Claims 1, 9-20, 23-25, 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No 5,663,134.

Claim 2 of the '134 patent is directed to an article of manufacture, which is a spray dispenser containing an aqueous spray composition comprising 0.015-0.3 % of perfume wherein at least 25 % of the perfume ingredients have a Clog P of 3 or smaller, 0.1-5 % of hydroxypropyl beta-cyclodextrin, wherein the weight ratio of perfume:cyclodextrin is about 5:100-25:100, 0.3-5 % of a solubilized, water-soluble $ZnCl_2$, and 0.05-1 % of low-foaming surfactant, and 0.0001-0.01 % of mixture of an antimicrobial containing 5-chloro-2-methyl-4-isothiazolin-3-one. The composition further contains less than about 3 % of a low molecular weight monohydric alcohol. See

instant claims 1, 9, 10, 14, 16-20, 30-32. See patented claims 1 and 3 for the types of cyclodextrin of instant claims 12, 13, and 15. The solubilizing agents of instant claims 23-25, fatty acids of esters of ethoxylated sorbitan and mixtures thereof, are defined in col. 11, line 53. For claims 33 and 35, although the '134 patent does not claim a method of making the composition the compositions of the patented claims are defined in Examples, which illustrate the process of making the clear compositions with specific pH. See also instant claim 30.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to compositions having overlapping claims.

Claims 1, 9-20, 23-25, and 30-33, and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No 5,783,544.

Claim 1 of the '544 patent is directed to an article of manufacture, which comprises a spray dispenser and an aqueous composition for reducing malodor impression, comprising 0.01-1 % by weight of perfume, an aqueous carrier, and a monohydric alcohol at a level of less than 5 %. Claim 4 requires that at least 25 % of the perfume have perfume ingredients having a Clog P value of 3 or smaller. The cyclodextrin of instant claims 1, 12, 13, and 15 and the perfume:cyclodextrin ratio of instant claims 1, 16, and 17 are disclosed in patented claims 8-17. The metal salts of instant claims 18-20 are disclosed in claims 18-20 of the patent. The solubilizing agents of instant claims 23-25, fatty acids of esters of ethoxylated sorbitan and mixtures

thereof, are defined in col. 10, line 48. The specification defines the composition of the patent in Examples, which contain Kathon CG, which is antimicrobial preservative comprising the component of claim 31 (E). For claims 33 and 35, although the '544 patent does not claim a method of making the composition, the compositions of the patented claims are defined in Examples, which illustrate process of making clear compositions.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition of the patented claims and the presently claimed composition are both directed to an aqueous composition having overlapping limitations.

Claims 1, 9-20, 23-25, and 30-33, and 35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 6-10, 14, 16, 17, 19-26, 29, and 31, 34-36 of copending Application No 10/222.519.

Claim 1 of the '519 application is directed to a method of using an aqueous composition comprising 0.01-1 % by weight of perfume, an aqueous carrier, water-soluble, uncomplexed cyclodextrin, and a monohydric alcohol at a level of less than 5 %. Claims 34-36 of the -519 application require that at least 25 % of the perfume has perfume ingredients having a Clog P value of 3 or smaller. Claims 23-25 require low molecular weight monohydric alcohol at a level of less than about 5 % by weight. The cyclodextrin of instant claims 1, 12, 13, and 15 are disclosed in claims 3, 4, 6-10 of the '519 application. The presently claimed weight ratio of perfume:cyclodextrin is met

when the components are added by the weight amounts as disclosed in the '519 claims. The solubilizing agents of instant claims 23-25, fatty acids or esters of ethoxylated sorbitan and mixtures thereof, are disclosed in '519 claims 16 and 17. The metallic salt of '519, claim 31, is defined in the specification, col. 13, line 17. See instant claims 18-20. The specification also defines the water-soluble preservative of '519 claims 29 and 30 in Examples VII and VIII, which contain Kathon CG, which is antimicrobial preservative comprising the component of instant claim 31 (E). For instant claims 33 and 35, although '519 does not claim a method of making the composition, the compositions of the copending claims are defined in Examples, which illustrate process of making clear compositions with specific pH. See also instant claim 30.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to aqueous compositions having overlapping limitations.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1611

